

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into this 2<sup>ND</sup> day of July, 2003, by and between the United States of America, including the United States Attorney for the Eastern District of Virginia (collectively "United States"); the Medicaid Fraud Control Unit (MFCU) of the Office of the Attorney General and the Department of Medical Assistance Services (DMAS) on behalf of the Commonwealth of Virginia (collectively the "Commonwealth of Virginia"); and Valley Nursing Homes, Inc. t/a Woodbine Rehabilitation and Healthcare Center, Alexandria, Virginia ("Woodbine"). The above sovereigns and entities are referred to herein as "the Parties."

PREAMBLE

A. WHEREAS Woodbine, located at 2729 King Street, Alexandria, Virginia 22302, is a long-term care nursing facility engaged in the provision of health care services to Medicare and Medicaid beneficiaries; and

B. WHEREAS the United States Attorney's Office for the Eastern District of Virginia, the Commonwealth of Virginia conducted an investigation arising under the federal civil False Claims Act, 31 U.S.C. §§ 3729-3733 and Virginia's civil Medicaid Fraud statutes pursuant to Virginia Code Annotated § 32.1-312 and § 32.1-313 to ascertain the adequacy of nursing services being provided to residents at Woodbine. As a result, the Governments contend that during the time period from 1997 to the present, certain residents identified in the Subpoenas Duces Tecum dated March 27, 2001 and September 25, 2001 experienced care which did not meet statutorily required standards as set forth in 42 U.S.C. § 1395i-3;

C. WHEREAS the parties by agreement employed two monitors designated by the U. S. Department of Justice to evaluate against generally accepted standards of clinical practice the environment, medical services, nursing services, the corporate compliance and quality assurance/improvement programs, and the other quality of care systems and procedures at Woodbine; and

D. WHEREAS the said monitors conducted said evaluation over a two-day period and among other things evaluated eighteen (18) individual residents, including chart audits, observation of care and interviews with residents; and

E. WHEREAS the monitors concluded in their comprehensive report that Woodbine substantially meets the generally accepted standards of care and does not require the surveillance of a federal monitor; and

F. WHEREAS the parties now wish to resolve this matter in an amicable manner; and

G. WHEREAS the parties agree that this Settlement Agreement does not constitute and shall not be construed as an admission of any liability, inadequacy or wrongdoing on the part of Woodbine, currently or formerly employed officers, agents, and employees of any of the foregoing, and may not be used as evidence of such in any proceeding by either the Governments or any third party;

NOW THEREFORE, for and in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the parties, intending to be legally bound, enter into the following Settlement Agreement:

1. (a) Woodbine agrees to deposit Seventy-Eight Thousand Dollars (\$78,000) in

a separate Escrow Account no later than ten (10) business days after the execution of this Agreement, the proceeds of which shall be used expressly for the acquisition of the following equipment related to patient care:

<u>Qty.</u>	<u>Item Description</u>	<u>Approx. Cost</u>
a. 25	Electric High/Low Beds.	\$37,000.00
b. 80	Healz-Up (facilitates raising heel or foot to reduce skin breakdown).	4,000.00
c. 1	Computer with audio/visual.	2,400.00
d. 1	Digital projector.	3,600.00
e. 1	Heat-on-demand (food warming system that will result in warmer food, intended to stimulate appetite).	26,000.00
f. 2	Computers for two nursing units, including printers and software (to facilitate drafting and updating of MDS and care plans).	3,000.00
g. 1	Fish tank.	<u>2,000.00</u>
TOTAL APPROXIMATE COST:		\$78,000.00

(b) The parties agree that the Escrow Account shall be maintained by the law firm of Economou, Forrester & Ray, which shall disburse funds to the vendors of said equipment in payment therefor.

(c) Woodbine further agrees to order not later than thirty (30) days of the execution of this Agreement acquisition of the items set forth above in 1(a).

(d) Woodbine agrees to authorize the escrow agent to provide to the U.S. Attorney's Office within thirty (30) days of the execution of this Agreement documentary evidence that said items of equipment have been ordered and further evidence within ninety (90)

days of the execution of this Agreement that said equipment has been received by Woodbine and paid for by the escrow agent.

(e) Any unused funds in the Escrow Account shall be returned to Woodbine to use for whatever they deem appropriate to improve resident care and quality of life after all of the items in paragraph 1(a) above have been received and paid for.

#### COMPLIANCE and ENFORCEMENT

2. Woodbine agrees that it will comply fully with the applicable laws, rules and regulations governing the Medicare and Medicaid programs, including the Nursing Home Reform Act of 1987, as amended and codified at 42 U.S.C. §§ 1395, et. seq., 1396 et. seq.; 42 C.F.R. Parts 483, 488. Woodbine has produced a Corporate Compliance Plan to the EDVA that incorporates the policies and principles set forth in HHS-OIG's Compliance Program Guidance for Nursing Facilities, 65 Federal Register 14289 (March 16, 2000). The Corporate Compliance Plan contains a comprehensive set of specific policies and procedures to ensure compliance by Woodbine, including such issues as a Code of Conduct; Financial, Employee, Falsification of Records, and Service Oversight; and Quality of Care. The Corporate Compliance Plan has been reviewed and approved by the EDVA and Woodbine agrees to abide by it.

3. If Woodbine fails to comply with any of the terms of this Agreement, or if any of Woodbine's representations be willfully and materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

- a. Seek specific performance of this Agreement, in which case the prevailing party shall be entitled to an award of reasonable attorneys fees and costs; or
- b. Exercise any other right granted by law.

4. If the United States exercises any of its rights under this Agreement, Woodbine specifically reserves all of its rights to challenge, defend and contest any such action.

#### RELEASES

5. In consideration of the promises made by Woodbine in this Settlement Agreement and conditioned upon the acquisition and payment in full of the items referenced in paragraph 1 above, the United States and the Commonwealth of Virginia, on behalf of the sovereigns, its officers, agents, agencies, and departments, hereby release and discharge Woodbine, its parents, affiliates, officers, directors and employees from any and all civil or administrative monetary claims, actions, causes of action, liabilities, losses, and damages, including attorneys' fees, costs and expenses, which the United States or the Commonwealth of Virginia may have against Woodbine, its parents, affiliates, officers, directors and employees under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, Virginia's civil Medicaid Fraud statutes §§ 32.1-312 and 313 of the Code of Virginia, and common law theories of payment by mistake, unjust enrichment, breach of contract and fraud for: (a) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Woodbine from January 1, 1997 to the effective date of this Settlement Agreement, or (b) the adequacy of care provided during the period January 1, 1997 to present to the nursing home residents identified in the Subpoenas Duces Tecum dated March 27, 2001 and September 25, 2001.

8. The Parties agree that the releases given in the preceding paragraph specifically exclude the following:

- (a) Any civil or administrative disputes, adjustments, CMS enforcement actions

or claims relating to matters other than those for (1) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health from January 1, 1997 to the effective date of this Settlement Agreement, or (2) the adequacy of care provided during the period January 1, 1997 to the present to the nursing home residents identified in the Subpoena Duces Tecum dated March 27, 2001 and September 25, 2001.

(b) Any civil, criminal or administrative disputes or claims arising under the Internal Revenue Code, Title 26 of the United States Code.

(c) Any disputes or claims arising under any express or implied warranties relating to products or services.

(d) Any disputes or claims arising under the criminal laws of the United States or the Commonwealth of Virginia.

(e) Except as explicitly stated otherwise in this settlement agreement, any administrative liability, including mandatory or permissive exclusion from federal health care programs.

(f) Any obligations created by this Settlement Agreement.

(g) Any civil money penalty or termination action by CMS, if such action is based on matters other than deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Woodbine from January 1, 1997 to the effective date of this Settlement Agreement or the adequacy of care provided to the nursing home residents identified in the Subpoenas Duces Tecum dated March 27, 2001 and September 25, 2001.

9. The parties agree that all costs (as defined in the Federal Acquisition Regulation ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §

1395-1395 g, and §§ 1396-1396v, and the regulations promulgated there under) incurred by or on behalf of Woodbine in connection with: (a) the government's investigations, and Woodbine's investigation and defense of the matter covered by this Settlement Agreement, (b) the negotiation of this Settlement Agreement, and (c) the payments incurred pursuant to paragraph 1 of this Settlement Agreement, and (d) any corrective actions taken pursuant to this Agreement that are not related to providing resident care, (including but not limited to the costs associated with hiring the Monitor and filing required reports and certifications) shall be unallowable costs for government contract accounting and for Medicare, Medicaid, VA and FEHBP reimbursement purposes. Unallowable costs shall not include: the cost of additional in service professional and compliance training for the staff, the cost related to additional personnel, including consultants, hired or retained for the purpose of improving resident care, capital improvements and other expenditures related to this agreement. Unallowable costs shall be separately estimated and accounted for by Woodbine and Woodbine will not charge such costs directly or indirectly to any contracts with the United States or any State Medicaid program, or to any cost report, cost statement, or information statement submitted by Woodbine, to TRICARE, VA or FEHBP programs. Nothing in this Settlement Agreement shall constitute a waiver of the rights of Woodbine, or any Medicare fiscal intermediary or contractor, or any Medicaid fiscal agent, to examine or re examine the unallowable costs described in this paragraph.

10. In consideration for such repose and on the terms and conditions contained herein, Woodbine fully and finally releases, dismisses, and forever discharges the United States and the Commonwealth of Virginia, its agencies, employees, servants, and agents, from any and all claims, causes of action, liabilities, losses, appeals of remedies imposed by CMS or HHS-OIG,

and damages, including attorneys' fees, costs and expenses, which Woodbine could have asserted against the United States and the Commonwealth of Virginia, its agencies, employees, servants, and agents before the effective date of this Settlement Agreement for: (a) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Woodbine from January 1, 1997 to the present or (b) the adequacy of care provided during the period January 1, 1997 to the present on behalf of the nursing home residents identified in the Subpoenas Duces Tecum dated March 27, 2001 and September 25, 2001. This paragraph shall not be interpreted to prevent Woodbine from pursuing amounts due to Woodbine as a result of the Medicare or Medicaid programs.

#### OTHER PROVISIONS

11. This Settlement Agreement constitutes the complete agreement between the Parties and may not be amended except by the written consent of the Parties.

12. The undersigned individual signing this Settlement Agreement on behalf of Woodbine represents and warrants that he/she is authorized by Woodbine to execute this Settlement Agreement. The undersigned United States and Commonwealth of Virginia signatories represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement and to bind their respective sovereigns to the terms and conditions herein.

13. Each party to this Settlement Agreement will bear its own legal and other costs incurred in connection with this matter.

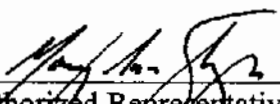
14. This Settlement Agreement is legally binding and judicially enforceable by the



Parties and it shall be applicable to and binding upon all of the Parties, their officers, agents, and employees.

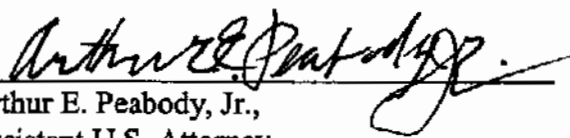
15. The effective date of this Settlement Agreement will be the date of the signature of the person authorized by the Board of Directors of Valley Nursing Homes, Inc., t/a Woodbine Rehabilitation and Healthcare Center, Alexandria, Virginia.

VALLEY NURSING HOMES, INC.,  
t/a WOODBINE REHABILITATION AND  
HEALTHCARE CENTER


By:   
Authorized Representative for Valley  
Nursing Homes, Inc., t/a Woodbine  
Rehabilitation and Healthcare Center

Date: 7/2/03

UNITED STATES OF AMERICA

By:   
Arthur E. Peabody, Jr.,  
Assistant U.S. Attorney  
Eastern District of Virginia

Date: 7/2/03

By:   
Constance H. Frogale  
Assistant U.S. Attorney  
Eastern District of Virginia

Date: 7/2/03

COMMONWEALTH OF VIRGINIA

By: Tracey D. Stith  
Tracey Stith  
Assistant Attorney General  
Office of the Attorney General  
Medicaid Fraud Control Unit

Date: 6/4/03

By: Randall H. Clouse  
Randall Clouse, Director  
Office of the Attorney General  
Medicaid Fraud Control Unit

Date: 6/5/03

By: Patrick W. Finnerty  
Patrick W. Finnerty, Director  
Virginia Department of Medical Services

Date: 6/1/03

By: Jerry W. Kilgore  
Jerry W. Kilgore  
Attorney General  
Commonwealth of Virginia

Date: 6/23/03

By: Mark R. Warner  
Mark R. Warner  
Governor  
Commonwealth of Virginia

Date: 6/30/03